FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5886 OF 2004

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B. P. Dharmadhikari, J.
Dated : 17th January, 2007.

Heard Advocate Shri C.V.Jagdale for petitioner and Advocate Shri S.C.Mehadia for respondents No.1 & 2.

Advocate Shri Jagdale places reliances upon the judgment of learned Single Judge of this court in the case of ***Divisional Controller MSRTC ..Vs.. Gulab Tanbaji Bhandarkar***, reported at *1998(1) Mh.L.J. page 818*. He contends that in practically identical circumstances this court has found that driver cannot be punished merely because the accident was of serious nature. He further contends that in addition, this Court has also held that back service record i.e. past record of said driver must be considered. He relies upon the provisions of Rule 6 (b) of the Discipline and Appeal Procedure Rules of M.S.R.T.C.

for this purpose. He contends that the sketch map on which the courts below have placed reliance has not been proved as required by the law.

Advocate Shri Mehadia who appears for respondents state that the sketch map was never in dispute and the petitioner has been found to be rash and

negligent in driving after considering road condition. He states that the circumstances speaks for itself and hence concurrent findings of fact require no interference by this court in writ jurisdiction. He further argues that the past service record was not relevant looking to the nature of misconduct proved.

I do not find it necessary to consider at length the questions raised. The sketch map shows that the bicycle rider was thrown at the distance of about 49 feet after impact and there were brake marks on road for about 41 feet. There was no challenge to the sketch map and therefore, the finding of Inquiry Officer by relying upon this position cannot be said to be perverse and have been accepted by both the courts below. The principals of *res ipsa loquitur* have been applied to the cases of accident by the Hon'ble Apex Court in the case of ***Cholan***

Roadways .Vs. G.Thirugnanasambandam, reported in *2005(3) S.C.C. page 241* ; and in the case of ***North-East KRTC .Vs. Devidas Manikrao Sadananda***, reported at *(2006) 8 S.C.C. page 52.*

In these circumstances, I find that application of mind and consideration of issue concurrently by both the courts below show no perversity or jurisdictional error.

Writ petition is accordingly dismissed. No costs.

JUDGE

Diwale